

## **Testimony of the Division of Criminal Justice Joint Committee on Public Safety and Security – February 24, 2009**

**In support of:**

- **S.B. No. 906 An Act Concerning the Collection of DNA Samples**

The Division of Criminal Justice supports this bill, the major provisions of which have been recommended by the DNA Data Bank Oversight Panel established pursuant to section 54-102m of the general statutes and consisting of the Chief State's Attorney, the Attorney General, the Commissioner of Public Safety and the Commissioner of Correction or their designees. The bill proposes changes that will increase the efficiency of the DNA collection process and most likely result in a cost savings for the State of Connecticut. While it is a strong bill on its own the Division of Criminal Justice would respectfully suggest some additions to strengthen it further.

As the chairperson of the DNA Data Bank Oversight Panel the Chief State's Attorney is aware that the group of individuals who are required to provide DNA samples but from whom the state has had the most difficulty obtaining samples includes those who are convicted of qualifying offenses but do not receive jail sentences or probation. This bill proposes transferring responsibility for the collection of DNA samples from these individuals from the Department of Public Safety to the Judicial Department. The Division believes that transferring responsibility for the collection of these samples to the Judicial Department will result in more collections and fewer prosecutions for the failure to provide a sample.

The Judicial Department is in a better position to successfully obtain these samples than is the Department of Public Safety. Because it is based in the court system itself the Court Support Services Division can establish contact with these persons immediately, before they even leave court in most instances, and set up appointments for the collection of the samples. We believe that this is an important element in obtaining the samples without further intervention of the court. The Judicial Department also has a greater number of locations at which samples can be taken which is likely to ensure better compliance.

It should be noted that the Judicial Department already collects samples from those who are sentenced and go directly to probation. The incremental burden on the Judicial Department should be offset by the benefit gained by the Department of Public Safety and the increased efficiency at which these samples are obtained.

Because the Court Support Services Division is presently involved in the collection of samples, and will become even more so if this bill is passed, it should be represented on the DNA Data Bank Oversight Panel which is responsible for the implementation and maintenance of the Data Bank. The Division strongly supports Section 3 of the raised bill, which proposes adding a representative of the Court Support Services Division to the Oversight Panel.

The Division also supports the provisions that make the failure to provide a sample a crime just as the refusal to provide one is. This provision would allow the State to prosecute those who don't ever appear to provide a sample but who do not affirmatively refuse to submit to the taking of a sample.

As it has for the past several years, the Division also supports increasing the penalty for the failure to provide a sample from a class A misdemeanor to a class D felony. In order to make the data bank work, we must have the data to input. Increasing the penalty for the refusal or failure to provide a sample is likely to ensure that those who are required to provide samples actually do so. Allowing warrants for the failure or refusal to provide a sample to be entered into the PRAWN system will streamline the processing of these matters.

While the bill is strong in its current form the Division feels that changes should be made to make it stronger. First, the Division proposes that provisions be added allowing the Department of Correction to use reasonable force to take samples from persons in custody who are required to provide a sample but refuse to do so. As noted above, a data bank is worthless without deposits -- in order to make the data bank work samples must be obtained so that profiles can be entered into it. At the present time, an individual can thwart the purpose of the data bank by simply refusing to provide a sample. While the person would be subject to the punishment for a class A misdemeanor, that punishment might pale in comparison to that which he or she might receive for a crime for which the person is responsible but has been able to avoid detection. The Division notes that other jurisdictions have provisions allowing the use of reasonable force to obtain a sample.

The Division proposal would authorize the reasonable use of force to obtain a sample only after the person has refused to provide one upon request. The proposal would limit the use of force to persons actually in the custody of the Department of Correction as that presents a more controlled environment in which to obtain the sample.

The Division further recommends that the bill:

- Allow the administrators of the data bank to advise law enforcement officials whether a particular individual is in the data bank. Such a provision will help the police to more quickly eliminate suspects in criminal investigations. Currently, if law enforcement officials submit a sample for comparison and no match is obtained they are told simply that there was no match. If the law enforcement officials were able to find out that a particular suspect was in the data bank at the time of the comparison they very well might be able to eliminate that person as a suspect and continue on with their investigation. The mere knowledge that the person's DNA is in the data bank -- but did not match that submitted for analysis -- may be enough to remove that person as a suspect.
- Make it clear that a biological sample obtained from a person who is required to give one must be of sufficient quality for DNA analysis. Current law is unclear about whether the State can obtain another sample if the previously obtained one is not sufficient for analysis.
- Provide that neither the state nor any of its officers is civilly liable for good faith efforts to collect biological samples for and maintain the data bank.
- Prevent an arrest or conviction from being invalidated if it is determined that the biological sample from which the DNA profile was obtained was placed in the data bank in good faith.

- Make the submission of a sample under a false name a crime.

The Division of Criminal Justice believes these changes are a logical extension of the bill on today's agenda and would further enhance our ability to use DNA technology in the best interests of our state, and, most importantly, in the interests of justice. We thank the Committee for this opportunity to provide our input and recommendations on these issues and would be happy to provide any additional information or answer any questions the Committee might have.

